

Message Text

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ACTION L-03

INFO OCT-01 AF-10 ARA-16 EA-11 EUR-25 NEA-14 RSC-01 IO-14

ISO-00 OIC-04 CIAE-00 INR-11 NSAE-00 PM-07 NSC-07

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E.O. 11652: N/A

TAGS: UN ICJ

SUBJ: UNGA LEGAL COMITE: REVIEW OF ROLE OF
INTERNATIONAL COURT OF JUSTICE (ICJ)

REFS: (A) USUN 3475, (B) USUN 3477

1. SUMMARY: USDEL ATTENDED MEETINGS OF TWO DIFFERENT GROUPS TO DISCUSS HOW PROCEED ON SUBJECT ITEM, USDEL STATED IT STILL BELIEVED STATES AND ICJ COULD BENEFIT FROM ESTABLISHMENT OF ADH HOC COMITE, THOUGH AS LAST RESORT USDEL COULD ACCEPT STRONG RESOLUTION WHICH DID NOT CALL FOR AD HOC COMITE AS LONG AS SUCH RES WAS ACCEPTABLE AS CONSENSUS COMPROMISE TO AD HOC COMITE OPPONENTS. CONCLUSION OF MEETINGS WAS THAT SUCH A RES SEEMS LIKELY CONCLUSION OF ITEM. END SUMMARY.

2. USDEL WAS IN PROCESS OF ARRANGING TO SCHEDULE MEETING FOR 3 PM OCT 1 OF ALL COSPONSORS OF 1971 AD HOC COMITE RES WHEN INVITED BY NETHERLANDS DEL TO ATTEND MEETING AT 9:45 AM OCT 1 OF DIVERSE GROUP OF DELS (IRAQ, BRAZIL, FRANCE, UK, AUSTRALIA, JAPAN, MEXICO, CANADA, FINLAND, INDIA, NETHERLANDS, USA). NETHERLANDS PURPOSE WAS TO SEEK TO DEVELOP CONSENSUS NON-CONTROVERSIAL RES ON ITEM, BEING
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OF VIEW THAT AD HOC COMITE ITEM WAS DEAD, AND WISHING TO

AVOID MERE MAJORITY ADOPTION OF A RES ON ICJ. THUS
NETHERLANDS INVITED SOME DELS NOT ESPECIALLY SUPPORTIVE OF
COURT.

3. BASIC WORKING DOCUMENT OF NETHERLANDS MEETING WAS
NETHERLANDS DRAFT RES (REFTEL A) INCORPORATING SOME
PARAS FROM MEXICAN DRAFT RES (REFTEL B). NETHERLANDS
REVISED TEXT DID NOT INCOPORATE LAST MEXICAN PREAMBULAR
PARA, WHEREBY ICJ SHOULD CONSIDER "DEVELOPMENTS REFLECTED
IN RESOLUTIONS ADOPTED BY INTERGOVERNMENTAL ORGANIZATIONS"
WHEN DECIDING CASES.

4. AT NETHERLANDS MEETING USDEL NOTED REVISED TEXT:

(A) SAID NOTHING RE PLACING ICJ ITEM ON FUTURE AGENDA,
NOR EVEN SUGGESTED ADVISABILITY GA KEEP ITEM UNDER
REVIEW;

(B) DID NOT DRAW ATTENTION OF STATES TO ADVISABILITY
OF ADHERENCE TO COMPULSORY JURISDICTION UNDER ARTICLE 36;

(C) RAISED ISSUE OF "FACTFINDING" WHICH MIGHT NOT BE
APPROPRIATE IN THIS CONTEXT;

(D) SHOULD REFER TO ICJ REMARKS IN SYG'S REPORT (A/9601/-
ADD 1); AND

(E) SHOULD INCLUDE PARA URGING STATES TO INCLUDE IN
THEIR INTERNATIONAL AGREEMENTS CLAUSES REFERRING DISPUTES
TO ICJ.

5. NETHERLANDS, AUSTRALIA AND JAPAN DELS AGREED WITH POINTS
USDEL RAISED FOR STRENGTHENING RES. NETHERLANDS DEL EXPLAINED,
IT WAS NOT INSISTENT ON SPECIFYING "FACTFINDING" POINT,
THOUGH IT FELT THAT THIS WAS A FUNCTION THE COURT OR
ANY OF ITS JUDGES COULD PERFORM.

6. BRAZIL DEL OPPOSED ANYTHING WHICH WOULD FORCE RPT

FORCE CONTINUED EXAM OF ICJ IN UN. IT VIEWED CONSTANT
REVIEW AS DAMOCLES SWORD OVER INDEPENDENCE OF ICJ. MEXICO
CONCURRED.

7. REMAINDER OF DELS GENERALLY SPOKE IN FAVOR OF A
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NON-CONTROVERSIAL RES WHICH WOULD BE ACCEPTABLE BY
CONSENSUS. (FRENCH DEL DID NOT SPEAK) USDEL, REITERATING
ITS PREFERENCE FOR AD HOC COMITE OR ALTERNATIVELY STRONG
RES, ALSO STATED THAT BEFORE COMMITTING ITSELF, IT WOULD
WANT TO CONSULT WITH ITS COSPONSORS ON AD HOC COMITE
ITEM AND MEETING WOULD BE HELD THAT DAY 3 PM. COMMENT:
SUPPORT FOR AD HOC COMITE WAS TACTICAL PLOY KEEP RES REASON-
ABLY STRONG END COMMENT. MEXICO DEL MADE A POINT

OF AGREEING TO NETHERLANDS DRAFT AS REVISED BY COMMENTS, SUBJECT TO INCLUSION OF ITS PARA RE "RESOLUTIONS OF INTER-GOVERNMENTAL ORGANIZATIONS" IN FINAL TEXT. THAT PARA HAD RECEIVED SUPPORT OF NO OTHER DELS AT MEETING AND WAS OPPOSED BY SEVERAL, INCLUDING US, UK AND CAN DELS.

8. COPY OF NETHERLANDS REDRAFT BASED ON COMMENTS AT MEETING CABLED SEPTTEL. REDRAFT REFLECTS US COMMENTS REPORTED PARA 4 ABOVE.

9. USDEL CHAIRED 3 PM MEETING OF COSPONSORS. USDEL GAVE SHORT HISTORY OF ITEM, DESCRIBED MORNING'S ACTIVITY, AND OPENED FLOOR FOR COMMENT.

10. AUSTRALIAN DEL GAVE STRONG STATEMENT FOR AD HOC COMITE OR AS LAST RESORT STRONG RES. ITALY, JAPAN AND CAN DELS GAVE SIMILAR VIEWS, THOUGH JAPAN AND CAN DELS STATED THEIR OPINION NOT ENOUGH VOTES IN COMITE 6 FOR ADOPTION OF AD HOC COMITE RES, AND ACCORDINGLY SUGGESTED WE STRIVE FOR ALTERNATIVE OF A STRONG RES. SWEDEN AND URUGUAY DELS AGREED WITH LATTER VIEWS.

11. USDEL ONCE AGAIN GAVE STRONG PITCH FOR AD HOC COMITE IDEA CONCLUDING THAT IT COULD ACCEPT A RES NOT CALLING FOR AD HOC COMITE IF WE WERE ASSURED OF AGREEMENT OR AT LEAST ABSTENTION FROM CAMP OF ICJ NON-SUPPORTERS. USDEL STATED THAT NETHERLANDS TEXT SEPTTEL (WHICH NETHERLANDS DEL CIRCULATED TO MEETING) WAS LEAST WE COULD ACCEPT. USDEL WOULD IN FACT LIKE TO SEE IT STRENGTHENED AS MUCH AS POSSIBLE.

12. NEAR END OF MEETING GUATEMALA, ARGENTINA, URUGUAY AND SEDEN DELS SAID THEY BELIEVED THEY COULD LIMITED OFFICIAL USE

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COSPONSORS RES BUT NEEDED SEEK INSTRUCTIONS. CAN DEL STATED IT HAD AUTHORITY TO COSPONSOR RES ALONG THESE LINES. GUATEMALA AND NETHERLANDS DELS UNDERTOOK TO SEEK OUT VIEWS OF OTHER DELS TO SEE IF A STRONG TEXT ALONG NETHERLANDS LINES CAN BE DRAFTED WHICH WILL BE ACCEPTABLE TO ALL.

13. WE SEE NO REASON WHY WE SHOULD NOT COSPONSOR AT SUCH TIME AS IT APPEARS TACTICALLY USEFUL TO DO SO AND REQUEST DEPT'S AUTHORIZATION DO SO.
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